IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 1126 OF 2003

BETWEEN

Rahul Thakre S/o Late Shri Dinesh Chand Haribhau Thakre, aged about 20 years, Resident of Janta Qr.No.91, Nehru Nagar Bilaspur, Tehsil and District Bilaspur (CG).

PETITIONER

A N D

1. The State of Chhattisgarh, Through the Secretary Department of Energy, Mantralay, D.K.S.Building, Raipur (CG).

2. Chhattisgarh State Electricity Board, C.S.E.B. Mandal, Raipur, Tehsil and District Raipur.

3. The Chief Engineer, (Production) C.S.E.B. Korba (East), KORBA.

4. The Superintending Engineer, Chhattisgarh State Electricity Board, Korba (East).

5. Madhya Pradesh Electricity Board, Through its Secretary, MPEB, Rampur, Jabalpur (MP).

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP.No..11.26..03 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	20.6.2006:- Shri Hemant Kesharwani with Shri Sanjay Ku. Agrawal, counsel for the petitioner. Shri G. K. Beriwal, Deputy Advocate General for the State/ respondent No.1. Shri P.S. Koshy, counsel for respondents No.2 to 4. Shri Vivek Verma, counsel for respondent No.5. Return has already been filed in this matter on behalf of respondents No.2 to 4. Annexure-P/3 filed in the Writ Petition No.3634/2004 (Sankar Rao V. State of Chhattisgarh and others) which is letter dated 26-8-98 sent by the Executive Engineer, M.P.E.B., Balod addressed to Smt. Shashi Rekha wife of late Shri S. Apparao is taken on record By this petition, the petitioner has prayed for quashment of Annexure-P/1 letter sent by respondent No.4 and further prayed for directing the respondents to consider the case of the petitioner for compassionate appointment. The case of the petitioner is that the petitioner's late father Shri Dinesh Haribhaoo Thakre was working on the post of Plant Assistant Grade I Call Transfer at MPEB Mandal Korba (East). His father died while in service on 5-12-98 leaving behind his widow and one son i.e. the petitioner. Copy of the death certificate is Annexure-P/2. The petitioner is a handicapped person having 45% permanent disability. Copy of the disability certificate is Annexure-P/3. The petitioner passed 8th Board Examination in the year 2000. Copy of the mark sheet is Annexure-P/4. At the time of death of the petitioner's father, the petitioner was only 16 years of age. The mother of the petitioner was an illiterate lady.	

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Respondents MPEB issued a circular regarding compassionate appointment dated 13-7-97. The petitioner submitted an application for compassionate appointment to the respondent No.4 but no action has been taken on the application, therefore, the petitioner again on 5-5-2001 submitted a fresh application, this time also the respondents kept the application pending for 15 months and lastly by way of the impugned communication Annexure-P/1 respondents informed the petitioner that he is not eligible for compassionate appointment. In the said Annexure it has been quoted that compassionate appointment can be given only where the employee died in the accident while discharging his duties or has received injuries while discharging his duties and has become unable to perform the duties and, therefore, he has been separated from the work. Thereafter, the petitioner immediately submitted a representation Annexure-P/6 in which he has categorically stated that the above circular cannot be applied to the petitioner's case because the case of the petitioner was taken on 5-5-2001, whereas new policy has come into force on 1-3-2002. The action of respondents is arbitrary and illegal.

Reply has been filed on behalf of respondents No.2 to 4 in which it has been mentioned that as per the policy dated 1-3-2002 only the dependents of those employees will be given compassionate appointment who expired in the course of employment or who have been declared disable due to accident during the course of employment. The petition is time barred and the policy dated 13-7-97 was discontinued vide circular dated 1-9-2000. The application of the petitioner dated 5-5-2001 was processed in view of the circular dated 1-3-2002 and found that the petitioner's application does not fulfill the criterion of circular dated 1-3-2002, therefore, the petition of the petitioner is liable to be dismissed.

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I have heard learned counsel for the parties and perused the record.

As far as impugned letter dated 1-8-2002 sent by respondent No.4 stating that as per the policy regarding compassionate appointment dated 1-3-2002 the petitioner is not entitled is concerned, it is admitted position that the father of the petitioner died on 5-12-98 and as the petitioner was minor and his mother was illiterate, therefore, he moved for compassionate appointment in the year 2001 and at that time the policy of the year 1997 was in force, therefore, the case of the petitioner, in all probability, has to be considered in accordance with the policy of 1997. During the pendency of the application for compassionate appointment of the petitioner, if any policy has been changed, that cannot affect the right of the petitioner which was accrued in favour of the petitioner as per the policy in force since 1997.

Learned counsel for respondents No.2 to 4 argued that as per clause-6 of the old policy dated 30th January 1997 only the application for compassionate appointment was to be made within a year and in this case same was not made, therefore, appointment cannot be considered.

In the first place this objection has not been raised by respondents in the letter dated 1-8-2002 and in the second place it has been mentioned in para-5.3 of the petition that at the time of death of father of the petitioner, he left behind widow and the petitioner only. The widow was illiterate and the petitioner was minor, therefore, after attaining the age of majority, the petitioner applied for compassionate appointment, as such Clause-6 of the Policy dated 30th January 1997 is not applicable in this case. Moreover, learned counsel for the petitioner placed reliance on the letter dated 26-8-98 sent by the Executive Engineer of the erstwhile

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M.P. Electricity Board in which Smt. Shashi Rekha was informed that her son S. Shankar Rao is not eligible for compassionate appointment because he is minor and on attaining the age of majority he will be appointed on compassionate ground. This letter was issued by none else than the Electricity Board and perusal of the same shows that in case any heir is minor at the time of death of an employee, then he is entitled for moving an application on attaining the age of majority and on the same ground, points raised by respondents in their return that the petition is filed with delay has no merit for the reason that the impugned letter was sent in the month of August, 2002 and this petition was filed in the year 2003, before that, the petitioner also made a representation to respondent No.4.

Now, coming to the point raised by learned counsel for respondents No.2 to 4 that Dinesh Haribhaoo Thakre, father of the petitioner, died in the year 1998 when MPEB was there and after 15-11-2000 bifurcation of the M.P. State Electricity Board has also been bifurcated and the Chhattisgarh State Electricity Board has come into existence, therefore, the petitioner is not entitled for compassionate appointment. I do not find any merit in this argument for the reason that under sub-section (4) of Section 58 of the M.P. Reorganization Act, the assets and liabilities and employees of undivided Board are to be distributed among the MPEB and the Chhattisgarh State Electricity Board. Vide order dated 6th January 2004, Government of India, Ministry of Power, issued an order in which it has been mentioned that representatives of both the States agreed in a meeting taken by Secretary, Power on 20th March 2003 that the division of employees would be in line with policy adopted for division of employees of MP

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Government. In para-2, it has been mentioned that the matter has been considered and in partial modification of provisional order dated 12th April 2001 so far as relating to the division of employees it has been decided finally to divide the posts and employees on the lines followed by DOPT for allocation of posts and employees of the State Government of erstwhile Madhya Pradesh for making allocation of posts and persons to the successor Electricity Board of MPEB on the principle that posts relatable to territorial jurisdiction of a successor State may be allotted to respective State and similarly employees belonging to such sub State territorial cadres being allocated to concerned State and only dividing the remaining posts and employees between the two States, the Government of India has decided to appoint a 3 members State Advisory Committee to be headed by the same person who was the Chairman of SAC appointed by DOPT for Madhya Pradesh. Therefore, on this principle the employees of MPEB who were working in the territory of newly created Chhattisgarh are to be allocated to the successor Chhattisgarh State Electricity Board on the principle and line followed by DOPT for allocation of posts and employees of the State Government of erstwhile State of Madhya Pradesh. The petitioner's father was working at Korba in the State of Chhattisgarh, therefore, being in the territorial division of CSEB the liability of compassionate appointment lies on the shoulder of the Chhattisgarh State Electricity Board.

For the foregoing reasons, the petition of the petitioner is allowed and the impugned order dated 1-8-2002 is quashed. Respondents are directed to consider the application of the petitioner for compassionate appointment in accordance with the policy of 1997.

C.C. as per rules.

Sd/-
L.C. Bhadoo
Judge